

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte YEVGENIY EUGENE SHTEYN

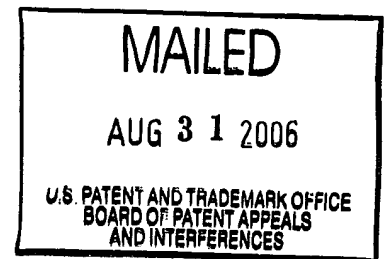
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Appeal No. 2006-2118  
Application No. 10/022,754

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ON BRIEF

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Before HAIRSTON, JERRY SMITH, and MACDONALD, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1, 2, 4, 6 and 7.

The disclosed invention pertains to a device for the input of data using a combination of data input systems.

Representative claim 1 is reproduced as follows:

1. A device comprising:

an ambiguous first data input system configured to associate a first user input with a plurality of potential data;

a second data input system independent from the first data input system receiving a second user input; and

a processing unit coupled to the first and second input systems for selecting one of the plurality of potential data from the second user input;

wherein the first data input system comprises a real or virtual keyboard configured to associate a specific keystroke with a plurality of graphical characters, and the second data input system is a speech recognition input system, a handwriting input system, or a stylus input system.

The examiner relies on the following reference:

Grover et al. (Grover)	5,818,437	Oct. 6, 1998
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The following rejection is on appeal before us:

2. Claims 1, 2, 4, 6 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Grover.

Rather than repeat the arguments of appellant or the examiner, we make reference to the brief and the answer for the respective details thereof.

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of anticipation relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer. Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived. See 37 C.F.R. §

41.37(c)(1)(vii)(2004). See also In re Watts, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

It is our view, after consideration of the record before us, that the evidence relied upon by the examiner does support the examiner's rejection of claims 1, 2, 4, 6 and 7. Accordingly, we affirm.

In rejecting claims under 35 U.S.C. §102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. Perricone v. Medicis Pharmaceutical Corp., 432 F.3d 1368, 1375-6, 77 USPQ2d 1321, 1325-6 (Fed. Cir. 2005), citing Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 1565, 24 USPQ2d 1321, 1326 (Fed. Cir. 1992). To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (internal citations omitted). To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. Karsten Mfg. Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

We consider the examiner's rejection of claims 1, 2, 4, 6 and 7 as being anticipated by Grover. Since Appellants' arguments with respect to this rejection have treated these claims as a single group which stand or fall together, we will consider independent claim 1 as the representative claim for this rejection. See 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Appellant notes that claims 1 and 7 call for a second data input system used in disambiguation that is a speech recognition input system, a handwriting input recognition system, or a stylus input system [brief, page 5]. Appellant argues that Grover contains no such disclosure or suggestion [*id.*].

The examiner disagrees [answer, page 5]. The examiner notes that Grover teaches a first data input system embodied as a virtual keypad with nine data keys, with each key configured to associate a specific keystroke with a plurality of graphical characters (col. 1, lines 46-47, col. 3, lines 66-67 and col. 4, lines 34-37, see also fig. 1) [*id.*, emphasis added]. The examiner further notes that Grover teaches a second data input system embodied as system level keys (e.g. see select key 104 shown in fig. 1; col. 4, lines 6-8) used to move the cursor or highlight bar within the list menu of candidate words discerned from the first data input system (col. 3, lines 66 through col. 4, line 9) [*id.*]. The examiner notes that Grover explicitly teaches that candidate words can be selected with other input devices such as a light pen, which the examiner argues is a type of stylus input system [*id.*; see Grover, col. 9, lines 18-25]. The examiner reasons that because a pen is a stylus, the light pen disclosed by Grover is a "stylus input

system,” as claimed [answer, page 5]. The examiner concludes that the candidate word menu list selection of the second data input system can be made with any pointing device such as a mouse or light pen, as disclosed by Grover at col. 9, lines 22-23 [*id.*].

We begin by construing the scope of the claimed “stylus input system” [claim 1, emphasis added]. “During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification.” In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Claim language is given its plain, ordinary, or accustomed meaning to one of ordinary skill in the relevant art, unless the applicant has imparted a novel meaning to the language. Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002). In the instant case, we note that the plain, ordinary, and accustomed meaning of the term “stylus” comports with a pointed instrument, such as a pencil or a pen. Therefore, we find that appellant’s claimed “stylus input system” is properly construed broadly as encompassing any input system that uses a pointed instrument for input [claim 1, emphasis added]. We note that this broad construction finds support within the instant specification at page 1, line 19, (e.g., “stylus-aided input systems”) and also within U.S. Pat. 6,285,785 to Bellegarda et al. (as incorporated by reference into the instant specification at page 1, line 22) [see Bellegarda et al., col. 5, line 38, e.g., “electronic tablet and stylus,” emphasis added].

Anticipation of a patent claim requires a finding that the claim at issue “reads on” a prior art reference. Titanium Metals Corp. v. Banner, 778 F.2d 775, 781, 227 USPQ 773, 778 (Fed. Cir. 1985) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”). In the instant case, we agree with the examiner that the claimed “stylus input system” broadly reads upon Grover’s explicit disclosure of “any pointing device such as a mouse or a light pen” [col. 9, lines 22 and 23]. We note that the examiner need only show one of the recited elements (i.e., “a speech recognition input system, a handwriting input system, or a stylus input system”) to meet the alternative language of the claim.

We further note that appellant has failed to point out the specific distinctions believed to render this portion of the claim patentable over the applied reference, as required by 37 C.F.R. §1.111(b). A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of §1.111(b). In particular, we note that appellant has failed to point out how the claimed “stylus input system” distinguishes over the light pen disclosed by Grover [col. 9, lines 22 and 23].

We recognize that Grover’s disclosure of “any pointing device” (i.e., the genus of all pointing devices) does not necessarily anticipate a “stylus” (i.e., a

species or particular type of pointing device, such as a pencil or pen) [Grover, col. 9, lines 22 and 23; see also claim 1]. See Perricone v. Medicis Pharmaceutical Corp., 432 F.3d at 1377, 77 USPQ2d at 1326 (“disclosure of a broad genus does not necessarily specifically disclose a species within that genus.”). However, we agree with the examiner that the instant claimed “stylus input system” (i.e., an input system that uses a pointed instrument such as a pencil or a pen) broadly reads upon Grover’s explicit disclosure of a “light pen” which is clearly a particular type (i.e., species) of the genus of all pointed instruments [col. 9, lines 22 and 23].

We note that claims 2, 4, 6 and 7 fall with independent claim 1 since appellant has not separately argued the patentability of these claims. See In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987). See also 37 C.F.R. § 41.37(c)(1)(vii)(2004). Accordingly, we will also sustain the examiner’s rejection of these claims for the reasons set forth by the examiner in the rejection.

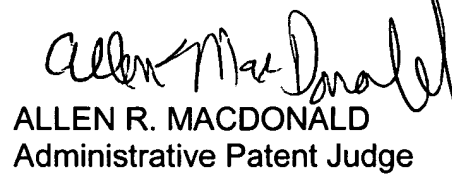
In summary, we have sustained the examiner’s rejection of all claims on appeal. Therefore, the decision of the examiner rejecting claims 1, 2, 4, 6 and 7 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

  
KENNETH W. HAIRSTON  
Administrative Patent Judge

  
JERRY SMITH  
Administrative Patent Judge

  
ALLEN R. MACDONALD  
Administrative Patent Judge

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CORPORATE PATENT COUNSEL  
PHILLIPS ELECTRONICS NORTH AMERICA CORPORATION  
PO BOX 3001  
BRIARCLIFF MANOR, NY 10510